07.06.2022 Junior to counsel for the appellant present.

Lawyers are on general strike, therefore, case is adjourned to 28.07.2022 for preliminary hearing before S.B.

(Rozina Rehman) Member(J) Form- A

FORM OF ORDER SHEET

Court of		

Case No	576/ 2022

	Case No	576/ 2022
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/04/2022	The appeal of Mr. Shabab Hussain presented today by Mr. Tajdar Faisal Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	Notest at uses	This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>DG-OS-22</u> Notices be issued to appellant and his counsel for the date fixed. CHAIRMAN On account of public holizlay to come up for the sano as before on 7/6/22 Readin

BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, **PESHAWAR**

						Respondents
DIRECTOR GI	ENERAL, SOIL	Ver & WATE		VAT	(ON & O	THERS
SHABAB HUSS	AIN			···-		Appellant
	Service Appe	eal No	\$76	· -	_/2022	

HIDEA

S.No.	Particulars	Annexure	Page Nos.
1.	Memo of Appeal		1-4
2.	Affidavit		5
3.	Addresses of Parties		6
4.	Copy of appointment order dated: 30-06-2006	A	7-8.
5.	Copy of appointment order dated: 30-06-2008	В	9
6.	Copy of Pay Roll	C	10
7.	Copy of impugned letter dated: 26-07-2008	D	. 11
8.	Copy of appeals/representations	Е	12-18
9.	Wakalatnama		19

Dated:-07/04/2022

Through

Appellant

TAJDAR FAISAL KHAN MARWAT

Advocate High Court, Peshawar Off: 202, 2nd Floor, City Gate Plaza, G.T. Road, Peshawar

0313-8708424

BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

	Service Appeal No	/2022
	bab Hussain S/O Ikhtiar Ali, Junior C Conservation, Kohat.	Clerk, Office of District Officer, Appellant
	Versus	·
1.	Director General, Soil & Water Khwa, Peshawar, Agriculture Service Islamia College, Peshawar.	Conservation, Khyber Pakhtur ces Academy Campus, Opposite
2. 3. 4.	Deputy Director, Soil Conservation, District Officer, Soil Conservation, District Comptroller of Accounts, Ko	District Kohat. Shat
		Respondents

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACT OF THE RESPONDENT NO. 4 WHO ISSUED IMPUGNED LETTER DATED: 26-07-2008 RAISING CERTAIN OBJECTIONS UPON THE APPOINTMENT ORDER/LETTER DATED: 30-06-2008 OF APPELLANT AND INACTION OF THE RESPONDENTS TO REMOVE THE OBJECTIONS OF THE RESPONDENT No. 4 AND THEIR FURTHER INACTION TO FIX SALARY OF THE APPELLANT AS JUNIOR CLERK AND PAY THE SAME TO THE APPELLANT IN ACCORDANCE WITH LAW.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED LETTER DATED: 26-07-2008 CONTAINING OBJECTIONS OVER THE APPOINTMENT ORDER/LETTER OF APPELLANT MAY KINDLY BE SET ASIDE AND THE SALARY OF THE APPELLANT MAY BE FIXED AS JUNIOR CLERK AND HE MAY BE ALLOWED TO WORK AS JUNIOR CLERK.

Respectfully Sheweth:

The appellant most humbly presents his grievances as under:-

- 1. That the father of appellant was working as Field Watcher and retired on the same post from the respondents' department.
- 2. That the appellant who was eligible under the rules in vogue, applied to the respondents for his appointment on any suitable post and in response, the appellant was appointed as Field Watcher BPS-01 vide appointment order dated: 30-06-2006.

{Copy of appointment order dated: 30-06-2006 is attached, as mark Annex-A}

- 3. That after appointment, the appellant submitted his arrival report to the respondent No. 3 and started his official duties with great zeal and devotion.
- 4. That later on, some posts of Junior Clerk became vacant and the appellant being eligible for the same, applied to the respondent NO. 3 for his adjustment against the said post, who recommended the appellant to be appointed on the said post of Junior Clerk and the respondent No. 2 was gracious enough to issue office order dated: 30-06-2008. Needless to mention that after submitting arrival report for the post of Junior Clerk and worked on the said post, the respondent No. 3 prepared Pay Roll of the appellant.

{True copy of appointment order dated: 30-06-2008 & Pay Roll are attached, as mark Annex-B & C}

5. That when the appointment order of appellant was sent to the respondent No. 4 for release of salary, the respondent No. 4 raised observations over the appointment order and pay bill with directions to send the relevant record for verification, etc.

{True copy of letter dated: 26-07-2008 is attached, as mark Annex-D}

- 6. That since then the appellant is waiting for the reply of the respondents No. 3 to be sent to the respondent No. 4. Needless to mention that the appellant time and again requested the respondents to resolve the long standing issue of pay fixation of appellant and to allow him to work as Junior Clerk but to no avail.
- 7. That the appellant also moved several written applications/appeals to the high ups for resolving the pay fixation issue and lastly, on 12-01-2021 moved fresh appeal to the Hon'ble Director General / respondent No. 1, but again no fruitful response is given till date.



{True copy of applications/representations and Departmental appeal is attached, as mark Annex-E}

8. That the appellant feeling dissatisfied and aggrieved from the actions and inactions of the respondents for not deciding the pay fixation issue, having no other alternate and adequate remedy is invoking the jurisdiction of this august tribunal on the following grounds inter-alia:-

GROUNDS:

- A. Because the action and inaction of the respondents for not deciding the pay fixation issue is against law, facts and in utter disregard of the material available on record, hence the same is untenable.
- B. Because the objection raised by the respondent No. 4 through impugned letter dated: 26-07-2008 is against the law.
- C. Because the respondents No. 1-3, never raised any objection on the appellant nor they have ever stopped the appellant from working as Junior Clerk in written form.
- **D.** Because the appellant after issuance of appointment letter dated: 30-06-2008 is entitled to be allowed to sit and work as Junior Clerk and to draw salary of junior clerk, but to the utmost shock, he is drawing salary as Field Watcher, which is against the law.
- E. Because the respondents are not only bound under the law to fix the salary of the appellant as Junior Clerk but to give due seniority to the appellant as junior clerk, because the appellant has been prevented by the respondent from being working as Junior Clerk.
- **F. Because** no explanation what so ever has been given by the respondents that why the requisite record has not been sent to the respondent No. 4 despite his clear request in writing and that why the appellant has not been given his due right.
- G. Because the impugned action and inaction on the part of respondents is against the directions of Hon'ble Superior Courts of Pakistan, given in plethora of verdicts.
- H. Because the appellant crave for leave to add further grounds at the time of oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution which adversely affected the appellant.



PRAYER

In view of the above, it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to:

- Declare that the appellant is validly appointed to the post of Junior clerk **(I)** and he is entitled for all the perks and privileges of the post of Junior Clerk.
- Direct the respondents to fix the salary of the appellant on the post of (II)Junior Clerk since 30-06-2008 and also give him pay protection for his past service.
- Declare that the objections raised in impugned letter dated: 26-07-2008 are (III)illegal, unlawful and inoperative upon the rights of the appellant.
- Direct the respondents to correct the seniority of the appellant in (IV) accordance with law from initial date of appointment.
- Direct the respondents to treat the appellant in accordance with law. **(V)**
- Any other relief deemed appropriate in the circumstances, not specifically (VI) for, may also be given to the appellant.

Dated: 02-04-2022

Appellant

Through

TAJDAR FAISAL KHAN MARWAT

Advocate High Court, Peshawar

VERIFICATION:

It is verified that all the contents of the instant appeal are true and correct and nothing has been concealed intentionally from this Hon'ble Tribunal.

Note: That no such like petition / Appeal on this subject matter has earlier been filed before this Hon'ble Tribunal.



BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No	/2022
SHABAB HUSSAIN	Appellant
Versus	
DIRECTOR GENERAL, SOIL & WATER CONSI	ERVATION & OTHERS
·	Respondents

AFFIDAVIT

I, Shabab Hussain S/O Ikhtiar Ali, Junior Clerk, Office of District Officer, Soil Conservation, Kohat (Permanently resident of Ibrahimzai, Tehsil & District Hangu), do hereby solemnly affirm and declare on oath that all the contents of the accompanying appellment are true and correct to the best of my knowledge and belief and nothing has been kept concealed intentionally from this Hon'ble Tribunal.

Identified By:

TAJDAR FAISAL KHAN MARWAT

Advocate High Court, Peshawar.

Deponent

CNIC # 14101-7582442-1

Cell# 0333-9299372



BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL, PESHAWAR

	Service Appeal No/2022
SHA	BAB HUSSAINAppellant
	Versus
DIRI	ECTOR GENERAL, SOIL & WATER CONSERVATION & OTHERS
	ADDRESSES OF THE PARTIES
	bab Hussain S/O Ikhtiar Ali, Junior Clerk, Office of District Officer, Conservation, Kohat. Appellant
	Versus
1.	Director General, Soil & Water Conservation, Khyber Pakhtun Khwa, Peshawar, Agriculture Services Academy Campus, Opposite Islamia College, Peshawar.
2.	Deputy Director, Soil Conservation, Tarnab, Peshawar.
3. 4.	District Officer, Soil Conservation, District Kohat. District Comptroller of Accounts, Kohat
₹.	Respondents
Date	ed: 07-04-2022
	APPELLANT

TAJDAR FAISAL KHAN MARWAT Advocate High Court, Peshawar

Office of the Executive District Officer, Agriculture, Kohat.

/EDO/Agri.

/2006 nated

Mr.Shabab Hussain S/o. Ikhtiar Ali, vill: and PO Ibrahimzai Tehsil and District Kohat.

APPOINTMENT AGAINST THE VACANT POST OF FIELD WATCHER (BPS-1) IN SOIL CONSERVATION DEPARTMENT, KOHAT. Subject:-

In pursuance of Establishment and Administration Department, N. W. F.P. Letter No.SOR-VI(E2Ad)1-3/2003 dated 30.6.2003 and No.E2A(AD)4-(152)/2004 dated 13.4.2005, Administration Department No.E&A(AD)4(152)2006 dated 25.3.2006 and also on the recommendation of District Soil Conservationist, Kohat Vide /8/ also on the recommendation of Pistrict Soil Conservationist, Kohat Vide /8/
dated 10.6.cf. The undersgined is pleased to appoint you against the quota
the graved for the childred of retired/decased of Class-IV Govt. Servant on
I superpart to made in 10 (4) of the NWFP Civil Services (Appointment Promotion, and Transfer) Rules 1989 on contract basis against the vacant post of
riled Watcher (BPS-1) in Soil Conservation department Kohat on the following terms and condition:-

- (i) You will be placed in minimum of BPS1(2150-65-4100) with usual allowances as permissible to Government Servant of the same pay scale.
- (ii) Your services will be governed under the Government of Napp Contract Policy 2002.
- (iii) Either party can terminated the contract on one months notice or one month salary in lieu thereof.
- (iv). You will be provided equal opportunities for local training.
- (v). You will be provided same facilities under Eenevolent Fund as admissible to Government Servant, at the rate to be prescribed by the government.

[You will avail the benefit of Contributory Provident Fund (CPF) through 5% contribution of minimum of your pay and 5% contribution to be made by the Government.

(vii).You will not contribute to GPF and shall not be entitled for Pension and gratuity benefits.

If the above offer of appointment on contract basis is acceptable to you on the above terms and conditions, you are advised to report to District Soil Conservationist, Kohat for duty, after medical examination from the medical Superintendent, Kohat.

> (Muhammad Yousaf Bangash) Executive District Officer, Agriculture Deptt: Kohat.

Dated Kohat the 30 /6/2006.

· Copy forwarded for information and necessary action to the:-The District Soil Conservationist, Kohat.

2. The Mistrict Accounts Officer, Kohat.

1221-22

Executive District Officer, Agriculture Deptt: Kohat.

ATTESTED

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OFFICE ORDER.

"In pursuance of Establishment and administration Department NWFP, Letter No. SPR-VI(E&Ad)1-3/2003 dated 30/6/2003 and No. E&A(AD)4(152) 2006 dated 25/3/2006 and also on the recommendation of District Officer Soil Conservation, Kohat Mr. Shabab Hussair is hereby appointed as Junior Clerk (BPS-7) (2940-160-7740) with usual allowance as admissible under the rules. Against the quota reserved for the children of retired/deceased of Class-IV, Government Servant on supernuation under rules 10(4) of the NWFP, Civil services (Appointment, Promotion and Transfer) Rules, 1989/regular basis against the vacant post in Soil Conservation Lepartment, Kohat as per term and condition (vogue in the Government of N.W.F.P.

Sd/-(MUHAMMAD YOUSAF BANGASH) DEPUTY DIRECTOR SOIL CONSERVATION NWFP, TARNAB PESHAWAR.

E/No. 825-27 /DDSC,

Dated Pesh: the 30-6 /2003.

Copy forwatded to:-

- 1. The District Officer Soil Conservation Kohat.
- 2. The District accounts Officer Kohat.

 (Mr. Shabab Hussain S/O Akhtian ali Extrict Watcher.

DEPUTY DIRECTOR, SOIL CONSERVATION N.W.F.P TARNAB PESH:

ATTESTE

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Annex-E Soil Conservation me / Ling Cio Cons دروًاست برا دعطا مرمك شخواه براي جوز ملرك مراح ازت برائ کا براء در جومر کلرک ١٠٠٠ كرا مر دخه الاهدامة كوبلورجونير ملرك فرل مور . 6:6,6 16 July 20 10; 10; 10. و المركم على صنيان الكركم المنتواه بطور جرنير مكرك كراك اما دُ سَرِي اَ مَن لَد قِرْكَ حَارِل إِنْ مَنْ لَد قِرْكَ عَلَى اللَّهِ اللَّهِ اللَّهِ اللَّهِ اللَّهِ اللَّ يَا عَالَى كُلُّ وَيُرْكُمُ إِنْ يُنْوُ وَلِينَ عَلَى الْمُورُ الْمِنْوُ وَلِينَ عَلَى. يحر بوامنراص أمال کوروز فار الفتال دری والرا 16/16 The Flield Min or of mile flies ما برز الل عدم ورواح عدا حت بال لا فرن با 106 60 866 My Son (266) Com البيرمارد ساليم اماز الله اس مجوا يا مك ادر مان وي 15 -2007 1 2010 100-100

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ATTESTET

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2(5) Sol Conjection in 21/30/2 1/23 د رفدا مع ادی بر ازان شخوه الطور جرز مار) المراز ال لَعْنَاكَ بِمُوالْمَا . مَكُرِيْرُولْ سَائِلُ) يُوجِرِيْرُكُلُولُ بِينَاكِي اللَّهِ اللَّهُ اللَّ س اور نس ننواه . Mojology & - on Chine كفرت بس مرفرات ما عرفها الم المعدمان المرابات Resident QJ-11-218 : 201-11-أ ورا مرا





Τo,

THE HON'BLE DIRECTOR Soil Conservation, Khyber Pakhtun Khwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL / REPRESENTATION FOR FIXATION OF SALARY OF THE APPELLANT AS JUNIOR CLERK SINCE THE DATE OF APPOINTMENT i.e. 30-06-2008 AND FIXATION OF SENIORITY SINCE THE DATE OF APPOINTMENT.

Worthy Sir,

With reference to the subject cited above, the appellant most respectfully submitted as under:

- 1. That the appellant was initially appointed as Field Watcher vide appointment order dated: 30-06-2006 by the Executive District Officer, Agriculture Department, Kohat.
- 2. That later on, the appellant was appointed as Junior Clerk vide office order dated: 30-06-2008 by the Deputy Director, Soil Conservation, Peshawar being competent authority. Needless to mention that the appellant was appointed under the deceased son quota and as per law and policy of the Govt. in vogue at that time (i.e. Appointment, Promotion and Transfer Rules, 1989), deceased employees son can be appointed in BPS-01 to 10 at that time commensurate to his qualification.
- 3. That since the date of issuance of office order dated: 30-06-2008, the appellant is working as Junior Clerk but the department is paying the salary of Field Watcher to him since 2008.
- 4. That the appellant time and again approached to the high-ups for fixation of his salary into higher pay scale instead of lower pay scale but to no avail.

ATTESTED



- 5. That the department is duty bound under the law to fix the salary of the appellant as junior clerk. It would be relevant to state that no explanation or plausible reason has been advanced or communicated to the appellant that why his salary is not fixed as junior clerk.
- 6. That the department is also bound to give proper and due seniority to the appellant as junior clerk since the date of appointment.

In view of the above, it is, therefore, requested that the salary of the appellant may kindly be fixed as junior clerk since 30-06-2008 and further due seniority may kindly be given to the appellant in accordance with law.

Dated: 12-01-2021

Appellant

SHABAB MUSSAIN S/O AKHTIAR ALI (Ex-Field Watcher)

Junior Clerk, Office of District Officer Soil Conservation, Kohat.

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ATTESTE

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ATTESTED

دعوى باعث تحريرآ نكه مقدمه مندرجه عنوان باللمس ابي طرف سه واسطي پيردي وجواب داي ديل كارواكي متعلقه معرفي سبولال ما المروك آن مقام کے مد موصلے مقرركر كے اقراركيا جاتا ہے۔ كيمها حب موصوف كومقدمه كى كل كارواكى كاكال اختيار ، وكا _ نيز وكيل صاحب كوراضى نامهرن وتقرر فالمته فيصله برحلف دييج جواب داى اورا قبال وعوى اور بسورت ومرى كرف اجراءاورصولى چيك وروبيارعوضى دعوى اوردرخواست برشم كى تقدريق زراي پردستخط كراف كا اختيار موكافيين صورت عدم بيروى يا و كرى يكظرفه ياايل كى برامدى اورمنسونى نیز دائر کرنے ائیل فکرانی ونظر ٹانی دبیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمد ذکور ككل ياجزوى كارواكى ك واسط اوروكيل يا عنارقا لونى كواسيند مراه يااسين بجائة تقرر كااعتيار موكا _اورساحب مقردشده كومهى وبى جمله ندكوره باانتتيارات حاصل مول مي اوراس كاساخت برواختة منظور تبول بوكا _ دوران مقدمه بين جوخر چدد هرجا شالتوائے مقدمه كے سبب سے وہوكا _ کوئی تاری پیشی مقام دوره پر مویا صدی با بر موتوو کیل صاحب پابند مون مے کہ بیردی مذكوركري لبداوكالت ناميكهديا كدسندر ب_ MJ- 8708124